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No. 95-1079

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

GEORGE MEYER
Petitioner,
v.
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, VALLEY SANITATION COMPANY, INC., LAND RECLAMATION COMPANY, and WASTE MANAGEMENT OF WISCONSIN, INC.
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF AMICUS CURIAE, LEAGUE OF WOMEN VOTERS, IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether a non-economic, evenhanded state regulation is subject to, and prohibited by, an irrebuttable presumption of unconstitutionally under the Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3, solely because it may have an impact on out-of-state commerce.

2. Whether the "effective recycling program" provision of the Wisconsin Recycling Law discriminates against interstate commerce in practical effect, in violation of the Commerce Clause.

3. Whether the "effective recycling program" provision of the Wisconsin Recycling Law imposes a burden of interstate commerce that is clearly excessive in relation to the putative local benefits, in violation of the Commerce Clause.

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INTEREST OF THE AMICUS, LEAGUE OF WOMEN VOTERS OF WISCONSIN

The League of Women Voters of Wisconsin ("League") is a non-partisan political organization which encourages the informed and active participation of citizens in government and influences public policy through education and advocacy. The League strongly supports citizen participation in government at all levels. Consistent with its concern about the issues which face the citizens of Wisconsin, the League is concerned about

the environment and the wise use of our resources, including the management of solid waste. The League's position, at both the state and national level, has been to encourage citizens to reduce, reuse and recycle solid waste. The League has received consents from the parties to file an amicus brief to express to this Court its support of petitioner's request for a Writ of Certiorari. These consents have been filed with the Clerk.

As early as 1973, the League recognized the importance of managing solid waste, both as a means of preserving natural resources and as a response to diminished landfill capacity in the state and the difficulty and expense in siting solid waste facilities. Members of the Wisconsin League participated, with League members in Illinois, Minnesota, Michigan, and Iowa, in a study on the management of solid waste. Based upon extensive member study and consensus, the League developed policies which support reducing the generation of solid waste and promoting its reuse and recycling. Since that time, the League has been active in encouraging the state and local governments to take major responsibility in controlling solid waste.

Before the Wisconsin Recycling Law was passed, the League took a leadership role at the local level in establishing and operating recycling cooperatives. It supported bottle and can deposit laws. The League lobbied in support of the Wisconsin Recycling Law when the legislature was considering this legislation. Following the Recycling Law's passage, local Leagues were involved in implementing municipal grants to achieve the 1995 landfill bans on 14 items. Therefore,

the League has had a significant interest in, and involvement with, the subject which is before this Court in the Petition for Writ of Certiorari submitted on behalf of George Meyer.

The League strongly believes that citizens should have the right to determine the quality of the environment in which they live. As a representative of Wisconsin citizens, the League supports the Wisconsin Recycling Law as an even-handed law that should apply to all solid waste disposed of in Wisconsin, regardless of its origin. The statute provides an exception to the banning of certain recyclable materials for communities which have an effective recycling program. The League supports this law as a cost effective method for reducing the quantity of solid waste destined for Wisconsin landfills while increasing the amount of material recycled. The court of appeals' ruling harms the ability of local and state governments to protect their environment if the method chosen to do so has an impact on interstate commerce, even if that impact is incidental and not discriminatory.

The League respectfully requests that this Court grant the Petition for Writ of Certiorari because it strongly believes that the court of appeals' decision unjustifiably limits the rights of local and state governments to protect the environment in which their citizens must live.

REASONS FOR GRANTING THE WRIT

The League will not repeat the arguments of the petitioner and of the amici states; rather, the League incorporates those arguments as though stated in this brief. In addition, the League asks the Court to consider the following reasons for granting the Writ.

I. LOCAL AND STATE GOVERNMENTS SHOULD TAKE THE MAJOR RESPONSIBILITY FOR MANAGING SOLID WASTE, WITH THE FEDERAL GOVERNMENT TAKING A LEADERSHIP ROLE IN SUPPORTING LOCAL EFFORTS.

The disposal of solid waste, while primarily a state and local function, is also a national concern. 42 U.S.C. § 6901(a)(4). Congress has found that the problems of waste disposal require federal leadership "in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices." *Id.* Congress has specifically found that "alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken." 42 U.S.C. § 6901(b)(8). Congress has also found that "millions of tons of recoverable material which could be used are needlessly buried each year." 42 U.S.C. § 6901(c)(1). However, although the problems involving solid waste are national in scope, the collection and

disposal of solid waste is primarily the function of state, regional and local agencies. 42 U.S.C. § 6901(a)(4).

The Wisconsin Recycling Law is a response to the problems which Congress has identified. It allows local control over the local environment. The provision allowing communities with effective recycling programs to avoid the ban on certain types of waste, encourages communities and, thus, citizens, to reuse and recycle. It is a practical, even-handed response to the problems of solid waste. The League believes that a review of the court of appeals' decision invalidating the "effective recycling program" provision is necessary to allow the citizens of Wisconsin the ability to meet the goals which Congress has set.

II. THE RECYCLING PROVISION PUTS, AT MOST, A MINIMAL BURDEN ON OUT-OF-STATE COMMUNITIES.

The ability of state and local governments to effectively address the problems identified by Congress is threatened by the court of appeals' holding that an even-handed statute, which, only incidentally, has a practical impact on economic activity completely outside the state, violates the dormant commerce clause. The district court's findings of fact demonstrate the minimal effect that the requirement of an effective recycling program would have on out-of-state communities. The district court determined that the interstate component comprised only 3.6% of Wisconsin's waste stream. Petitioner's App. 43. Only 20 out-of-state communities would be adversely affected by the Wisconsin statute.

Id. Because most of these communities already have recycling mechanisms in place, the costs to adopt a procedure to meet the requirements of the Wisconsin law would be minimal. *Id.* The district court found that even the affected communities did not consider the effective recycling program requirement to be a substantial burden. Petitioner's App. 45. In fact, the adoption of the Wisconsin requirement would be cost neutral because of the savings in lower tipping fees, the need for less equipment, and the proceeds from the sale of the recycled materials. *Id.*

The evidence submitted at trial established that "community-wide mandatory recycling is likely to result in the removal of the greatest amount of recyclable materials from the waste stream." Petitioner's App. 46. The court of appeals' holding that this method impermissibly burdens interstate commerce is not only contrary to established law, as pointed out by the petitioner and the amici states, it also deprives the citizens of Wisconsin of the most effective and efficient method to deal with the problem of solid waste and protect their environment.

CONCLUSION

For the above reasons, and the reasons set forth by the petitioner and the amici states, the League respectfully requests that this Court grant the Petition for Writ of Certiorari.

Respectfully Submitted,

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